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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1987

G. P. REED,

Petitioner,

v.

UNITED TRANSPORTATION UNION, etc.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Whether the six-month limitation period of §10(b) of the National Labor Relations Act applies to a claim brought by a Union member under Title 1 of the Labor Management Reporting and Disclosure Act which does not implicate collective bargaining process but concerns only internal disruption of Union democracy.

PARTIES

The parties to this proceeding are G. P. Reed, the United Transportation Union, Fred H. Hardin, K. R. Moore, and J.L. McKinney.

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Petitioner, G. P. Reed, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Courts of Appeals for the Fourth Circuit entered in this proceeding on September 17, 1987.

OPINIONS BELOW

The decision of the Court of Appeals is reported at 828 F.2d 1066, and is set out at pp. 48a - 70a of the Appendix. The District Court's Order denying Summary Judgment is reported at 633 F.Sup. 1516 and is set out in pertinent part at pp. 1a - 45a of the Appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on September 17, 1987. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTE INVOLVED

This action involves rights protected by 29 U.S.C. §411 and is brought pursuant to 29 U.S.C. §412, which provides:

> Any person whose rights secured by the provisions of this subchapter have

been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

STATEMENT OF THE CASE

On August 2, 1985, Petitioner commenced this action in the United States District Court For the Western District of North Carolina. Plaintiff raised claims under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §401 et. seq. ("LMRDA") as well as pendent state contract and quantum muruit claims. Specifically the Plaintiff claimed that the Respondents had violated his rights to freedom of speech and assembly as a Union member

as well as his right to be safeguarded from improper disciplinary action under Title 1 of the LMRDA, 29 U.S.C. §411. He claimed that the selective application of a "prior approval" policy to disallow his claims for services rendered to the Union were meant to punish him for speaking out against Local President Warlick, whose claims for reimbursement had not been paid under order of the international union despite his failure to obtain prior approval for his claims. The Petitioner also claimed the Respondents had not properly performed their fiduciary duties as officers of the Union in violation of Title V of the LMRDA, 29 U.S.C. §501.

The Respondent filed a Motion to Dismiss the Complaint or in the alternative for Summary Judgment.

The trial court heard the Motion on January 31, 1986, and subsequently entered an Order denying the Respondents' Motion with regard to the 29 U.S.C. §411 and the pendent state claims and dismissing Petitioners' claim pursuant to 29 U.S.C. §501. The trial court further indicated that an application for Interlocutory Appeal pursuant to 28 U.S.C. §1292(b) would stay all proceedings in that court. Therefore, the Respondents successfully petitioned for an Interlocutory Appeal. The Petitioner did not appeal from the dismissal of the 29 U.S.C. §501 claim.

The primary issue raised by the Respondent in the trial court and again in the Fourth Circuit was whether these courts were required to apply the six-month statute of limitations provided by 29 U.S.C.

§160(b) to a freestanding LMRDA "Bill of Rights" claim. While the trial court rejected this argument, the Court of Appeals reviewed the conflicting opinions of the other circuits which had reviewed the issue subsequent to this Court's decision in Delcostello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct 2281, 76 L.E.2d 476 (1983). Following this review, and without substantial analysis, the Court of Appeals adopted the reasoning in Steelworkers' Local 1397 v. United Steelworkers of America, 748 F.2d 180 (3rd Cir.)(1984). A timely Petition For Certiorari followed this decision.

REASONS FOR GRANTING THE WRIT

(1) Certiorari Should Be Granted To Resolve The Conflicts Between Decisions Of Courts Of Appeals With Regard To The Application Of A Six Month Statute Of Limitations To LMRDA Claims Pursuant To 42 U.S.C. §412.

To date six circuits have reviewed the issue of whether the Delcostello decision requires the imposition of the six month statute of limitations contained in 29 U.S.C. §160(b)(2) to claims arising under 29 U.S.C. §411 and brought under 29 U.S.C. §412. Four circuits apply the six-month limitations to LMRDA claims.[1] Two reject this approach after determining that Delcostello

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1 Lewis v. International Brotherhood of Teamsters, Local 771, (3rd Cir. 1987)(reaffirming Steelworkers' Local 1397 v. United Steel Workers of America, 748 F.2d 180 (3rd Cir. 1984)) Cliff v. United Auto Workers, 818 F.2d 623 (7th Cir.) Petition for Cert. filed, 87-42 (1987)(reaffirming Vallone v. Teamsters Local No. 705, International Brotherhood of Teamsters, 755 F.2d 520 (7th Cir. 1984)) Davis v. United Auto Workers, 765 F.2d 1510 (11th Cir.)(1985) Cert. Denied, ____ U.S. ____, 106 S.Court 1284 (89 L.Ed.2d 592)(1986); Adkins v. IBW, 769 F.2d 330, 335 (6th Cir. 1985).

neither compels nor suggests such a result.[2]

Only the decisions in Local 1397, supra and Doty, supra contain substantial analysis of Delcostello. The Local 1397 decision has provided the conceptual underpinning for the decisions which have applied the six-month limitation period rests on four basic propositions, each of which is convincingly repudiated in Doty. The Doty court's reasoning is set out in full as follows:

> The first was that a Title I action bears a "family resemblance" to an unfair labor practice charge: both are concerned with "arbitrary actions by unions", 748 F.2d at 183, and so there is thus no distinction between "internal" LMRDA concerns and "external" NLRB concerns. Id. This, we feel, is to stretch the

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2 Rodonich v. House Wreckers Union Local 95, 817 F.2d. 967 (2nd Cir. 1987); Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986).

rubric of "family" far beyond its sense in Delcostello, where the term was used to indicate a dramatic overlap of equivalency, situations in which a charge of unfair representation or breach of a collective bargaining agreement would "also amount to unfair labor practices". 462 U.S. at 170. 103 S.Ct. at 2293. The fact that because both the NLRA and the LMRDA endeavor to protect workers from unfair treatment, they must be deemed to bear a "family resemblance" is no more a unifying perception than the fact that both tort and contract law purport to protect against unreasonable actions.

A second, closely related proposition of the Local 1397 court was that its "family resemblance" perception was illustrated by the fact that plaintiffs' objective was to change the overall policies of the national union in bargaining with industry. Again, while true, the observation claims too much; it overlooks the fact that the Delcostello court did not overrule Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 86 S.Ct 1107, 16 L.Ed.2d (1966), where, although a collective agreement was at issue, the

Court applied a six-year state contract limitations period because the "'consensual processes'" - "'the formation of the collective agreement and the private settlement of disputes under it'" were not implicated. 462 U.S. at 162-63, 103 S.Ct. at 2289. In short, the fact that some day, in some ways, a plaintiff's claim may affect collective bargaining falls far short of the nexus required to invoke "family resemblance" reasoning.

A third statement by the Local 1397 court is that there is a "similarity in policy consideration [between]...LMRDA suits and unfair labor practice charges" that dictates invocations of the same six-month section 10(b) limitations period. 748 F.2d at 183. The only reasoning supporting this conclusion is that "rapid resolution of internal union disputes is necessary to maintain the federal goal of stable bargaining relationships, for dissension within a union naturally affects that union's activities and effectiveness in the collective bargaining arena." Id. at 184. As to this ipse dixit, we can do no better than cite the Davis court, which, after

quoting this passage, observed, "This link appears rather tenuous in the situation of a single dispute between an individual union member and the union." 765 F.2d at 1514 n. 11.

Finally, and of less importance, the Local 1397 court added "as a final point" that a Title I LMRDA action would rarely be latent, since "rights are denied openly". 748 F.2d at 184. Leaving aside the obvious point that in the case at bar the allegations describe a non-open, non-obvious denial of membership, perceivable only gradually, perhaps a more salient point is that which we have noted in our main discussion, the solemnity of the union member's decision to attack the leadership and the possible benefit redounding to the membership and public at large.

784 F.2d 9-10.

As Justice White noted in dissenting to the denial of certiorari in Davis, supra, the explicit rejection in Doty of the analysis contained in Local Union 1397 indicates the need for a

resolution of the conflict by this Court. Now the conflict has deepened with the recent decision in Rodonich, supra there is even a greater need for the court to resolve the divergent Court of Appeals' decisions.

(2) Certiorari Should Be Granted Since Application A Of Six-Month Limitation Period Is Inconsistent With This Court's Holding In DelCostello.

With limited exception, federal statutes do not prescribe their own time limitations; rather, the limitations must be borrowed from other sources. This Court has repeatedly declared that, as a general rule, courts should apply the most closely analogous state statute of limitations. Wilson v. Garcia, 471 U.S. 261 (1985); Runyon v. McCrary, 427 U.S. 160, 180 (1976). The determination of which state

statute of limitations is to be borrowed can present a question of characterization, because federal statutes often create rights for which there is no close state parallel. The need for a court to make such a characterization, however, is not a sufficient reason to abandon the rule. Delcostello v. Teamsters, 462 U.S. 151, 171, (1983); Wilson v. Garcia, supra.

This Court has created a narrow exception to the general rule for cases in which the analogous state statutes would frustrate the implementation of national policies. Agency Holding Corp. v. Mallory-Duff ____ U.S. ____ (1987); Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977). The "hybrid" action against a Union and an employer, which was discussed in Delcostello, is one such

exception. In order to understand why an exception was necessary in Delcostello, it is important to understand the precise role which "hybrid" actions play in federal labor law.

Prior to Delcostello, this Court had held that individual employees, as well as their unions, may sue under §301 of the LMRA to enforce rights conferred on them by collective bargaining agreements between their employers and their Union. Smith v. Evening News Ass'n., 371 U.S. 195, 200 (1962). But the Court had also erected a significant procedural barrier to prevent the courts from being inundated with suits to enforce collective bargaining agreements -- the requirement that contractual grievance procedures, including

arbitration, be exhausted before suit is filed. Republic Steel v. Maddox, 379 U.S. 650 (1965).

A major substantive barrier to such suits was also in place -- the requirement that courts give favorable review to arbitral awards, unless the award cannot possibly be justified as having drawn its essence from the collective bargaining agreement. Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). This Court had also recognized, however, that employees may be prevented from exhausting the contractual procedures, or may be unable to obtain a fair hearing in arbitration. To protect the employees, the Court had placed a duty of fair representation on the Union regarding its conduct of contractual procedures and its

decision to terminate such procedures. Accordingly, the Court had ruled that individual employees seeking to enforce their rights under a collective bargaining agreement would be excused from the exhaustion requirement and from the highly deferential standard of review under Enterprise Wheel if they could demonstrate that the Union breached its duty of fair representation in handling the grievance. Vaca v. Sipes, 386 U.S. 171 (1967); Hines v. Anchor Motor Freight, 424 U.S. 554 (1976).

The issue of the proper limitation period for duty of fair representation actions first reached this Court in UPS v. Mitchell, 451 U.S. 56 (1981). Mitchell presented the narrow question of which statute was most analogous for post-

arbitration actions against employers alone, and the Court decided that the most analogous statute was that for suits to vacate arbitration awards. Id. at 61-62. Moreover, the Court expressed concern that, absent a reasonably short limitations period, the parties to the collective bargaining agreement could not be sure that an arbitrator's resolution of a dispute under the agreement was in fact final. Thus, although state limitations periods for enforcing contractual rights provided another analogous alternative, those statutes allowed too long a period in which the arbitrator's disposition of a grievance was in question, and their use would frustrate federal policy favoring prompt resolution of labor-management disputes. Id. at 63-64.

Two years later Delcostello resolved whether a federal limitations period, rather than any of the state alternatives, applied in hybrid suits against both an employer and a Union. This Court reiterated its concern that several of the analogous state limitations periods, such as actions for tortious injury or for professional malpractice, were so lengthy that employer-union disputes, and the compromise by which they were resolved, could remain in limbo for years, and thus could endanger stability in labor relations and, in the long run, labor peace. 462 U.S. at 163-164, 168-169. The other most analogous state statutes, however, those applied to actions to vacate arbitration awards, were so short -- generally three months -- that they did not allow enough time for aggrieved employees to initiate

suits. Id. at 167-168. Moreover, the Court recognized that, if the most analogous state statute were applied to the employer (i.e., actions to vacate an arbitration) and to the Union (i.e., tort, malpractice or rights created by statute), the result would be application of different limitations periods to two parts of the same lawsuit, which would clearly have been undesirable. Id. at 169 n. 19.

Still, this Court noted, "these objections to the resort to state law might have to be tolerated if state law were the only source reasonably available for borrowing, as it often is." Id. at 169. However, it found that §10(b) of the NLRA was more appropriate than any of the state analogies, both because it had been designed by Congress to accommodate a

"very similar balance of interests", i.e., employee rights versus the stability of private adjustment of labor disputes, and because the duty of fair representation was itself a cause of action implied from the NLRA. Id. at 169-171.

This Court was careful, however, to remind the lower courts that they should not too readily decline to adopt state limitations periods simply because a state fails to provide a perfect analogy: "We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, in labor law or elsewhere. . . [R]esort to state law remains the norm for borrowing of limitation periods [unless] a rule from elsewhere in federal law clearly

provides a closer analogy than available state statutes, and . . . the federal policies at stake and the practicalities of limitation make the rule a significantly more appropriate vehicle." Id. at 171-172 (emphasis added). Additionally, the Court in Delcostello specially affirmed its decision in Auto Worker v. Hoosier Cardinal Corp., 383 U.S. 696 (1966), which had approved the use of borrowed state statute of limitations in straightforward action under §301 of the Labor Management Relations Act, 29 U.S.C. §185.

Subsequent to Delcostello, every Court of Appeals which has considered the proper limitations period for actions under §303 of the LMRA to enforce the secondary boycott provisions of the NLRB has elected not to apply the six-month period of §10(b). Monarch Long Beach Corp. v.

Teamsters Local 812, 762 F.2d 228, 231 (2d Cir. 1985); Carruthers Ready-Mix v. Cement Masons Local 520, 779 F.2d 320 (6th Cir. 1985). These courts have applied longer limitations periods even though labor-management relations are directly affected by such suits and a secondary boycott, like a breach of the duty of fair representation, is an unfair labor practice for which Congress expressly prescribed a six-month limitations period for filing charges with the NLRB. These courts concluded that the effect of such litigation on stable labor-management relations and on labor peace is insufficient to warrant a departure from the normal rule of borrowing analogous state limitations periods. Similarly, the limitations periods in employment discrimination cases have been borrowed from state law, Johnson

v. Railway Express Agency, 421 U.S. 454, 462 (1975), despite the fact that such actions frequently call into question matters which have been settled between Unions and employers. Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974). The circuits have continued to apply state limitations periods in such cases under 42 U.S.C. §1981, citing Delcostello as authority. Howard v. Railway Express, 726 F.2d 1529, 1531 (11th Cir. 1984).

The only substantive area of labor law where a number of Courts of Appeals have failed to heed the Delcostello admonition -- that its holding was not to be taken as a departure from the prior practice of borrowing state limitations periods for federal labor law causes of action has been in cases involving LMRDA claims concerning violations of

rights granted to Union members under 29 U.S.C. 411.

Certiorari should be granted to further clarify to the Courts of Appeals that Delcostello does not constitute any departure from the Court's continued practice of borrowing appropriate state limitations periods for these LMRDA causes of action under 29 U.S.C. 412.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals.

Respectfully submitted,

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
C-C-85-477-P

G. P. REED, Plaintiff, v. UNITED TRANSPORTATION UNION, FRED A. HARDIN, K.R. MOORE, and J.L. McKINNEY, Defendant.	O R D E R (Filed April 1, 1986)

THIS MATTER was heard before the undersigned on January 31, 1986 in Charlotte, North Carolina on the Defendants' Motion to dismiss or for summary judgment. The Defendants were represented by Clinton J. Miller and J. David Jones, Attorneys at Law. The Plaintiff was represented by John W. Gresham, Attorney at Law.

The Plaintiff, G. P. Reed, is the Secretary/Treasurer of Local 1715 of the Defendant United Transportation Union, which is a labor organization within the meaning of 29 U.S.C. §401 et seq. In August 1982, Defendant Fred A. Hardin, President of the Union, sent Defendant J. L. McKinney, International Auditor of the Union, to Charlotte, North Carolina to audit the books and records of Local 1715. The audit was prompted by a letter to Defendant Hardin from a member of Local 1715 regarding his concerns about the financial stability and future of the Local. As a result of the audit, Defendant McKinney disallowed checks paid by the Local to the Plaintiff for "time lost" in the amount of $1,210.20.

The Plaintiff paid the amount disallowed, but appealed Defendant

McKinney's findings to Defendant Hardin by way of a letter dated September 6, 1982. The Plaintiff claimed that the repayment of the $1,210.20 was demanded on the ground that he was required to get approval for reimbursement for "time lost" to do various tasks before "losing" the time and doing the work. He further claimed that no such prior approval requirement had existed or been enforced before its application to him.

Defendant Hardin denied the Plaintiff's appeal in a letter dated October 1, 1982. Hardin explained that when a local officer is salaried, his regular salary is meant to cover the responsibilities of his office. He noted that the payments that were disallowed had been claimed for the performance of ordinary

duties and responsibilities of his office.

The Plaintiff subsequently sought to enforce the "prior approval" policy he claims had been applied to him when Local President Fred Warlick and another Local officer requested reimbursement for time spent on Local 1715 business for which the Local had not given prior approval. Defendant Hardin, however, ordered the Plaintiff to pay those claims.

On June 28, 1983, the Plaintiff met with Defendant K. R. Moore, Vice President of the Union, to determine whether the Union planned to continue to enforce dual policies with respect to expense payments by denying his appeal for reimbursement. The Plaintiff claims that Defendant Moore refused to discuss the matter.

On July 1, 1983, the Plaintiff's attorney wrote to Defendant Hardin complaining about the $1,210.20 repayment the Plaintiff was required to make to the Union after the audit as a result of the different standards allegedly applied to the Plaintiff and other Union members with regard to payment of Union expenses. He asserted that the heart of the conflict involved Local President Warlick's actions to harass the Plaintiff for not supporting his views, and that if the Union supported Warlick in those efforts, it would be in violation of 29 U.S.C. §411.

On July 22, 1983, Defendant Hardin responded to the Plaintiff's attorney, stating that the issue concerning the time disallowed as a result of the audit had been

considered closed once the Plaintiff had made his repayment to the Union.

On August 2, 1983, the Plaintiff's attorney sent Defendant Hardin another letter, in which he reported that he had advised the Plaintiff of Hardin's response concerning his request for reimbursement. He also informed Defendant Hardin that he had advised the Plaintiff "to commence litigation on or about September 15, 1983, unless the Union has properly reviewed and reconciled this matter." Letter dated August 2, 1983 from John Gresham, Esq. to Union President Hardin.

The Plaintiff filed this action on August 2, 1985, exactly two years after his attorney's last letter to Defendant Hardin. In his Complaint, the Plaintiff raises claims under the Labor-Management Reporting and

Disclosure Act, 29 U.S.C. §401 et seq. ("LMRDA") as well as pendent state implied contract and quantum meruit claims. Specifically, the Plaintiff claims that the Defendants have violated the Plaintiff's rights to freedom of speech and assembly as a union member as well as his right to be safeguarded from improper disciplinary action under Title I of the LMRDA, 29 U.S.C. §411.[1] He

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[1] The relevant text of §411 provides:

> (2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.
>
> (5) Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

29 U.S.C. §411(a)(2), (a)(5).

claims that the selective application of the "prior approval" policy to disallow his claims was meant to punish him for speaking out against Local President Warlick, whose claims for reimbursement were not denied despite his failure to obtain prior approval for his "time lost." He also claims that the Defendants have not properly exercised their

fiduciary duties as officers of the Union pursuant to Title V of the LMRDA, 29 U.S.C. §501.[2]

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[2] The relevant text of §501 provides:

> (a) Duties of officers, exculpatory provisions and resolutions void. The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

29 U.S.C. §501(a).

Whether the Court may entertain the Plaintiff's claim under §411 of Title I of the LMRDA depends on whether that claim has been brought in a timely fashion. Because Congress has not explicitly provided a limitations period for such claims, the Court must "borrow" the most appropriate statute of limitations from some other source.

The last Fourth Circuit case to address the issue of what statute of limitations to apply to a claim under §411 of the LMRDA was Howard v. Aluminum Workers International Union, 589 F.2d 771 (4th Cir. 1978). In Howard, the Fourth Circuit noted that courts "have found that denial of free speech is similar to a personal injury under state law and have

applied tort limitations statutes to such claims." Id. at 774. Accordingly, the Court determined that Virginia's two-year statute of limitations for personal injury claims should apply to the Plaintiff's claim that his union had abridged his right of free speech guaranteed by Title I of the LMRDA.

Since Howard represents the Fourth Circuit's last word on the appropriate limitations period for actions brought under Title I of the LMRDA, the Plaintiff contends that this Court is bound to apply North Carolina's three-year statute of limitations for personal injury actions. The Defendant, on the other hand, relies on the Supreme Court's more recent opinion in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), and its progeny and argues that the Court

should apply the six-month limitations period of Section 10(b) of the National Labor Relations Act for unfair labor practices charges to the Plaintiff's LMRDA Title I claim.

The task before the Court in DelCostello was the selection of an appropriate statute of limitations for a "hybrid" action combining (1) a union member's claim against his employer under §301 of the Labor Management Relations Act for violation of a collective bargaining agreement, and (2) his claim against his union for breach of its implied duty of fair representation in its handling of his grievance against the employer. The Court stated at the outset of its opinion that it has "generally concluded that Congress intended that the courts apply the most closely analogous statute of limitations under state law" when

federal law fails to provide explicitly for a limitations period for a federal action. Id. at 158. The Court noted, however, that "[i]n some circumstances, . . . state statutes of limitations can be unsatisfactory vehicles for the enforcement of federal law. In those instances, it may be inappropriate to conclude that Congress would choose to adopt state rules at odds with the purpose or operation of federal substantive law." Id. at 172.

The Court proceeded to reject the state statutes of limitations suggested by the parties because they provided imprecise analogies to the claims in the hybrid action and failed to accommodate the policy considerations underlying the hybrid action. The Court found the usual ninety-day statute of limitations for the vacation of arbitration awards to

be too short to provide an employee with a "satisfactory opportunity to vindicate his rights under §301 and the fair representation doctrine." Id. at 166. On the other hand, the Court determined malpractice limitations periods, varying from three years to ten years, to be too long in light of the strong federal interest in speedy resolution of suits involving the grievance and arbitration procedures of a collective bargaining agreement. Id. at 168-69. The Court adopted instead the six-month limitations period of §10(b) of the National Labor Relations Act, "a federal statute of limitations actually designed to accommodate a balance of interests very similar to those at stake here--a statute that is, in fact, an analogy to the present lawsuit more

apt than any of the suggested state-law parallels." Id. at 169.

In deciding to apply §10(b)'s six-month period to the hybrid action, the Court first noted that a "substantial overlap" often exists between claims against a union for breach of its duty of fair representation, against an employer for breach of a collective bargaining agreement, and unfair labor practice charges. It found that "fair representation claims are allegations of unfair, arbitrary, or discriminatory treatment of workers by unions--as are virtually all unfair labor practice charges made by workers against unions." Id. at 170. It further stated that "it may be the case that alleged violations by an employer of a collective bargaining agreement will also amount to unfair labor practices." Id.

Even more important to the Court in its decision to adopt §10(b)'s limitations period was the close similarity of the policy considerations relevant to the choice of a limitations period for unfair labor practice charges and for hybrid §301/fair representation actions. The Court observed:

> "In §10(b) of the NLRA, Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective-bargaining system. That is precisely the balance at issue in this case. The employee's interest in setting aside the 'final and binding' determination of a grievance through the method established by the collective-bargaining agreement unquestionably implicates 'those consensual processes that federal labor law is chiefly designed to

> promote--the formation of the . . . . agreement and the private settlement of disputes under it.' Hoosier, 383 U.S. at 702. Accordingly, 'the need for uniformity' among procedures followed for similar claims, ibid., as well as the clear congressional indication of the proper balance between the interests at stake, counsels the adaptation of §10(b) of the NLRA as the appropriate limitations period for [hybrid §301/fair representation lawsuits]."

Id. at 171 (quoting United Parcel Service, Inc. v. Mitchell, 451 U.S. 56, 70-71 (1981) (Stewart, J., concurring)).

The Supreme Court did not, however, intend to create an all-embracing new rule to be applied whenever an action involving a labor dispute lacks a congressionally enacted statute of limitations. The Court stressed that

> our holding today should not be taken as a departure from prior practice in

> borrowing limitations periods for federal causes of action, in labor law or elsewhere. We do not mean to suggest that federal courts should eschew use of state limitations periods anytime state law fails to provide a perfect analogy. See, e.g., Mitchell, 451 U.S., at 61, n.3. On the contrary, as the courts have often discovered, there is not always an obvious state-law choice for application to a given federal cause of action; yet resort to state law remains the norm for borrowing of limitations periods.

DelCostello, 462 U.S. at 171.

Consistent with this cautionary language, the Supreme Court in DelCostello did not disturb its holding in Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966), that the six-year state statute of limitations governing contracts should be applied to an action under a collective bargaining agreement brought by a union against an employer. The Court noted that in

Hoosier it had resisted the suggestion to establish a uniform federal period of limitations for such lawsuits despite its recognition that suits involving labor-management relations ordinarily call for uniform law. The DelCostello Court explained its decision in Hoosier by stating:

> [W]e reasoned that national uniformity is of less importance when the case does not involve "those consensual processes that federal labor law is chiefly designed to promote--the formation of the collective agreement and the private settlement of disputes under it," 383 U.S., at 702. We also relied heavily on the obvious and close analogy between this variety of §301 suit and an ordinary breach-of-contract case.

DelCostello, 462 U.S. at 163.

Since DelCostello, the circuits have split on the issue whether §10(b)'s six-month limitations period should be extended to a union member's LMRDA Title I claims against

his union. The Sixth and Seventh Circuits have determined in a conclusory fashion that the factors guiding the Supreme Court's choice of a limitations period for the hybrid action in DelCostello apply with equal force in the context of an LMRDA claim and, therefore, subjected the LMRDA claims before them to the same six-month limit. See Adkins v. Electrical Workers, 769 F.2d 330, 335 (6th Cir. 1985); Vallone v. Local Union No. 705, International Brotherhood of Teamsters, 755 F.2d 520, 521-22 (7th Cir. 1984).

The Third Circuit reached the same conclusion after a more detailed analysis in Local Union 1397 v. United Steelworkers, 748 F.2d 180 (3rd Cir. 1984). Following the analysis used in DelCostello, the Court first found that Title I of the LMRDA and the NLRA provisions

governing unfair labor practices bear a "family resemblance" since they "are both addressed to the same basic concern: the protection of individual workers from arbitrary actions by unions . . . ." Id. at 183.

It was the perceived similarity in policy considerations underlying the choice of a limitations period for LMRDA claims and unfair labor practice charges, however, that convinced the Third Circuit to apply §10(b)'s six-month period. The Court found that, while a union member needs sufficient time to vindicate his rights under the LMRDA, "rapid resolution of internal union disputes is necessary to maintain the federal goal of stable bargaining relationships, for dissension within a union naturally affects that union's activities and effectiveness

in the collective bargaining arena." Id. at 184.

As a final point, the Third Circuit expressed its opinion that a six-month limitations period for LMRDA claims would not be inherently unfair to union members. It noted that LMRDA Title I violations are rarely latent, and thus the aggrieved union member should be able to decide whether to sue within six months of the time the cause of action arises. The Court believed in essence that if the Supreme Court thought six months was enougn time for filing a §301 claim, the imposition of a six-month limit for filing an LMRDA claim would likewise be fair. Id.

Although ultimately adopting the result reached by the Third Circuit in Local Union 1397, the Eleventh Circuit in Davis v. United Automobile Aerospace, and Agriculture Implement

Workers, 765 F.2d 1510 (11th Cir. 1985), cert. denied, ___U.S.___ (1986), revealed certain weaknesses in the Third Circuit's reasoning. With regard to the adequacy of a six-month period for filing an LMRDA Title I claim, the Eleventh Circuit noted a potential practical problem that could preclude the aggrieved union member from perfecting his LMRDA claim. The Court explained:

> A cause of action under Section 411 accrues when the plaintiff union member discovers, or in the exercise of reasonable diligence should have discovered, the act constituting the alleged violations, at which time the statute of limitations begins to run. However, section 411(a)(4) provides that a union member may be required to exhaust reasonable internal union procedures for up to four months before proceeding with a suit under section 412. Thus, union members might be forced into a "Catch-22" situation in which they could be barred from suing the union if

> they wait to sue for more than six months while exhausting union remedies, but could be dismissed from federal court for failure to exhaust internal remedies if they file suit within the limitations period without seeking to exhaust.

Id. at 1515 n.13.

More significant to the issue whether the reasoning of DelCostello compels application of §10(b)'s limitations period to LMRDA Title I claims is the Court's rejection of the Third Circuit's conclusion that rapid resolution of a union member's LMRDA grievance against his union is necessary to maintain the federal goal of stable bargaining relationships. The Court found that the link between dissension within a union and the union's effectiveness in the collective bargaining arena "appears rather tenuous in the situation of a single dispute between

an individual union member and the union." Id. at 1514 n.11. Indeed, the Court flatly disagreed with the Third Circuit's appraisal that the same policy considerations underlying the choice of a statute of limitations for unfair labor practices are present in an LMRDA Title I suit. The Court stated:

> [W]e note an important distinction between the present action and a hybrid §301/fair representation claim as was alleged in DelCostello.
>
> . . . .
>
> The present action, alleging a violation of statutorily-protected free speech, involves a different balance of interests [than did the hybrid action in DelCostello]. First, an action alleging a violation of 29 U.S.C. §411 is brought only against the union; the employer is not involved. Therefore, the national interests in stable labor-management bargaining relationships and the speedy, final resolution of disputes

> under a collective bargaining agreement are not implicated. Accordingly, the need for national uniformity in the application of limitation periods to such an action is not as great. See DelCostello, 108 S.Ct 15 2289; Auto Workers v. Hoosier Corp., 383 U.S. 696, 702, 86 S.Ct. 1107, 1111, 16 L.Ed.2d 192 (1966). Furthermore, a union member's interest in protection against the infringement of his rights of free speech rises to a national interest, as embodied in section 101(a)(2) of the LMRDA, 29 U.S.C. §411(a)(2), and thus seems of greater importance than an employee's interest in setting aside an individual settlement under a collective bargaining agreement.

Id. at 1514 (footnote omitted).

Despite its recognition of these policy arguments against extending §10(b)'s six-month limitations period to LMRDA Title I claims, the Eleventh Circuit felt "constrained by the rationale of DelCostello and the holdings of our sister circuits to

reach the same conclusion in the present case." Id. The Court stated that it felt bound by the fact that the Supreme Court had found a strong connection between the national interest in labor peace and the necessity for a short time period in which to bring an action based on a labor union's implied duty of fair representation to find a similar connection between labor peace and an action based on a union's alleged mistreatment of its members under Title I of the LMRDA. Id.

It is true that the Supreme Court in DelCostello identified the federal policy in favor of "relatively rapid final resolution of labor disputes" as a reason for rejecting the suggested three- to nine-year malpractice statute of limitations for the fair representation claim against the

union. DelCostello, 462 U.S. at 168. This Court notes, however, that what the Supreme Court may consider "relatively rapid" in one type of labor dispute may be different from what may satisfy that policy in another context. In DelCostello, the Court mentioned the "rapid resolution" policy in the context of its discussion of the need for speedy and final resolution of disputes that may involve the interpretation of critical terms in the collective bargaining agreement affecting the entire relationship between company and union. Id. at 169. In Auto Workers v. Hoosier, supra, however, the Court specifically found that the federal goal of "relatively rapid disposition of labor disputes" suggested by §10(b)'s six month provision would be satisfied by application of a six-year statute of

limitations in the context of a §301 action by a union against an employer for a straightforward breach of a collective bargaining agreement. Hoosier, 383 U.S. at 707. In any event, this Court does not agree with the Eleventh Circuit's sudden conclusion that the Supreme Court's concern over the speedy resolution of the fair representation claim in DelCostello automatically mandates as speedy a resolution when the suit is based on a dispute under Title I of the LMRDA.

The First Circuit recently issued a thorough and well reasoned opinion in Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986), in which it refused to follow its sister circuits in their extension of the result in DelCostello to actions brought solely against a union for a violation of Title I of the LMRDA. After

examining the reasoning and cautionary language of DelCostello, the Court "dr[e]w the clear conclusion that DelCostello is not the kind of precedent that lends itself as a springboard for easy application to other rights, statutes and policies. Rather, it is a closely reasoned exception to a general rule which illumines a rather narrow path." Id. at 6. It further stated that its

> Own scrutiny of the interests and policies at stake in this [LMRDA Title I] case convinces us that they so differ from those in DelCostello that its underlying approach mandates adherence in this case to the normal mode of applying "the most closely analogous statute of limitations under state law." 462 U.S. at 158.

Id. at 2.

Specifically, the First Circuit found from the legislative history of the LMRDA that Title I, which has

designated a "bill of rights" akin to that in our federal constitution, was enacted to protect a union member's civil and political rights as opposed to his economic rights. Thus, whereas the labor-management relationship is the core of the NLRA and the hybrid §301/fair representation claim, the individual's interest in internal union democracy is at the heart of Title I of the LMRDA. The Court drew from the legislative history "the sense that claims under Title I's bill of rights provisions were viewed primarily as civil rights matters rather than as labor matters." Id. at 8. It, therefore, believed that deriving a statute of limitations for pure Title I LMRDA claims from a state statute governing civil rights actions would be more logical than borrowing one from an unfair labor

practices statute. Accord McQueen v. MaGuire, No. 82 CIV. 8445 (PNL), Slip Op. (S.D.N.Y. March 11, 1986); Bernard v. Delivery Drivers, 587 F.Supp. 524 (D.Colo. 1984).

Like the Eleventh Circuit, the First Circuit also determined that an LMRDA bill of rights claim does not implicate the same underlying policy concerns found in DelCostello. Such a claim cannot be asserted against an employer; does not challenge the stable bargaining relationship between the union and the employer; and does not affect the interpretation of a collective bargaining agreement. In addition, when a union member is suing only for breach of his "civil rights" under Title I of the LMRDA, there is no attack on a private settlement under a collective bargaining agreement. The Court thus concluded that "the

interests served by a rather short statute of limitations in DelCostello, stable labor-management relationships and finality in privately grieved and arbitrated settlements, are virtually, if not entirely, absent in the case at bar." Id. at 7.

In contrast, the Court found that the interest of the union member is "qualitatively enhanced" in an LMRDA Title I case. The rights asserted in a Title I case were created by Congress in a specific statute modeled after the federal Bill of Rights. Id. at 7; see also United Steelworkers v. Sadlowski, 457 U.S. 102, 108-111 (1982). Thus, the union member's interest represents a national policy. The Court noted that there are no such specifically identified rights in a hybrid claim. Furthermore, the Court found that the

objective of Title I is to increase union democracy, whereas the objective sought in the typical hybrid case is a purely personal victory in the form of restoration of job, pay, or promotion." Id. at 9. The Court concluded that the "sorts of interests protected by the LMRDA make it inappropriate to limit suits under that act without a compelling reason." Id. at 9. Accord McQueen v. Maguire, No. 82 Civ. 8445 (PNL), Slip Op. (S.D.N.Y. March 11, 1986) ("a very short limitations period [for LMRDA bill of rights claims] would be justified only in the face of an overwhelming national interest in speedy resolution of the suit"); Rodonich v. House Wreckers Union Local 95, 624 F.Supp. 678, 682 (S.D.N.Y. 1985) ("Although the rapid resolution of labor disputes serves an important national policy, its

urgency is not so great when the result of applying the six-month statute might be to thwart the Congressional purpose in enacting the LMRDA, which was to provide union members with a 'bill of rights.'"); Rector v. Local Union No. 10, Civil No. 4-85-1142, Slip Op. at 11, 12 (D.Md. October 31, 1985) ("The importance of [a union member's "bill of rights"] in our legal system should lead us to give union members every opportunity to vindicate those rights, instead of searching out a short period of limitations . . . . Federal labor law should not be procedurally determined to resolve LMRDA claims quickly in a vain attempt to protect unions from diversity. Congress had precisely the opposite intent in mind when it wrote the LMRDA.")

The Second Circuit's interpretation of the reach of DelCostello also advises against adopting §10(b)'s six-month limitations period for LMRDA Title I claims. While arguing that DelCostello need not be narrowly construed to apply only to claims identical to those in DelCostello, the Second Circuit in Robinson v. Pan American World Airways, Inc. 777 F.2d 84 (2d Cir. 1985), adhered to its earlier view expressed in Monarch Long Beach Corp. v. Soft Drink Workers Local 812, 762 F.2d 228 (2d Cir. 1985), cert. denied, ____U.S.___, 106 S.Ct. 569 (1986), that DelCostello is inapplicable to actions which do not involve an immediate and direct impact on labor-management relations. It stated that in determining whether DelCostello should be applied in a labor-related

matter, "the key question is whether the dispute arises out of a labor-management relationship in which uniform and speedy settlement is highly desirable." Id. at 89.

Obviously, a union member's LMRDA Title I claim does not arise out of a labor-management relationship, but rather out of the union member's relationship with his union. It impacts only tangentially, if at all, on the union's bargaining relationship with the employer. Further, the Supreme Court noted in DelCostello that national uniformity is of less importance when the case does not involve "'those consensual processes that federal labor law is chiefly designed to promote--the formation of the collective bargaining agreement and the private settlement of disputes under it.'" DelCostello, supra, 462 U.S. at 1621-

163 (quoting Hoosier, 383 U.S. at 702. A Title I LMRDA suit such as the one presently before this Court does not implicate "those consensual processes," so application of a uniform federal limitations period is not as crucial a concern as it was in DelCostello.

The Court further believes that the Eleventh and First Circuits have aptly demonstrated that LMRDA Title I actions do not involve the same policy considerations that compelled the Court to adopt a rather short limitations period in DelCostello. Finally, the Court agrees with the First Circuit that an LMRDA Title I claim more closely resembles a civil rights claim than an unfair labor practice charge and that it is, therefore, more appropriate to borrow a statute of limitations applicable to a civil rights action than one

that governs unfair labor practice charges.

Thus, having reviewed the precedents from other circuits on the propriety of extending DelCostello to actions based on a union member's LMRDA Title I claim against his union, the Court is of the opinion that the sounder position is to decline to apply §10(b)'s six-month limitations period to the Plaintiff's LMRDA Title I claim. Instead, the Court will apply North Carolina's three-year limitations period for personal injury actions under N.C.Gen.Stat. §1-52 since that statute would apply to a federal civil rights action. See Wilson v. Garcia, ___U.S.___, 105 S.Ct. 1938 (1985) (state statutes of limitations for personal injury actions should apply to federal civil rights actions). This result is in accord

with the Fourth Circuit's pre-DelCostello disposition of the LMRDA statute of limitations problem in Howard v. Aluminum Workers International Union and Local, 589 F.2d 771, 774 (4th Cir. 1978). Thus, the Plaintiff's LMRDA Title I claim should not be dismissed as untimely, since he filed it within three years of the time the cause of action arose.

Because the circuits are divided on this statute of limitations issue, however, the Court recognizes that there is substantial ground for difference of opinion with its ruling on the timeliness of the Plaintiff's LMRDA Title I claim. Since the resolution of the limitations issues involves a controlling question of law which could dispose of the Plaintiff's LMRDA Title I claim, an immediate appeal may materially

advance the ultimate termination of the litigation of that claim. Therefore, the Defendants are entitled to apply to the Fourth Circuit Court of Appeals for an interlocutory appeal of this ruling within ten days of the entry of this Order pursuant to 28 U.S.C. §1292(b).

Since the Court has determined that the Plaintiff's LMRDA Title I claim should not be dismissed as untimely, it must consider the Defendants' alternative argument that the claim should be dismissed because the Plaintiff failed to exhaust his internal union remedies pursuant to 29 U.S.C. §411(a)(4).[3] The

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[3] 29 U.S.C. §411(a)(4) provides:

> No labor organization shall limit the right of any member thereof to institute an action in any court . . . . Provided, that any such member be required to exhaust reasonable hearing procedures (but not to

Defendants argue that President Hardin's unfavorable response to the Plaintiff's request for reimbursement could have been appealed to the Board of Directors of the Union pursuant to Article 75, II of the Union Constitution if the Plaintiff had not procrastinated in asserting his claims. That article of the Union Constitution provides:

> A member or subordinate body may appeal to the Board of Directors from any interpretation of this Constitution made by the International President, provided such appeal is filed with the GEneral Secretary and Treasurer within ninety (90) days from the date the decision by the International President was made.

UTU Constitution, Article 75, II.

> exceed a four-month lapse of time) within such organization, before instituting legal . . . proceedings against such organizations or any officer thereof . . . .

The Plaintiff contends that Article 75, II does not apply in this case since it covers only appeals from the President's interpretation of the Union's Constitution. The Plaintiff has never sought an interpretation of the Constitution from President Hardin. Since the claim involves matters of internal regulation and not matters of constitutional interpretation, the Court finds that the Plaintiff did not have a right to appeal President Hardin's decision under the provision cited by the Defendants. As the Defendants have shown the Court no other internal remedies that were available to the Plaintiff, there appears to be no valid basis of their argument for dismissal because of failure to exhaust union remedies.

[The remaining portion of the Order discusses Plaintiff's claim

under 29 U.S.C. §501. The Court dismissed this claim. Petitioner did not appeal the dismissal.]

NOW, THEREFORE, IT IS ORDERED that:

(1) The Defendants' Motion to dismiss the Plaintiff's claim pursuant to 29 U.S.C. §411 is DENIED;

(2) Because the Court is satisfied that its ruling on the timeliness of the Plaintiff's claim under 29 U.S.C. §411 involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this ruling may advance the ultimate termination of the litigation, the Defendants may apply to the United States Court of Appeals for the Fourth Circuit within

ten (10) days of the date this Order is filed for permission to appeal this ruling pursuant to 28 U.S.C. §1292(b);

(3) The Defendants' Motion to dismiss the Plaintiff's claim pursuant to 29 U.S.C. §501 is GRANTED;

(4) The Defendants' Motion to dismiss the Plaintiff's state law claims is DENIED; and

(5) Should the Defendants apply for an interlocutory appeal pursuant to 28 U.S.C. §1292(b), that application shall stay all proceedings in this Court.

This the 30th day of April, 1986.

ROBERT D. POTTER, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED DISTRICT COURT OF APPEALS

FOR THE FOURTH CIRCUIT

NO. 86-8112

UNITED TRANSPORTATION UNION, FRED A. HARDIN, K.R. MOORE, and J.L. McKINNEY,

Petitioners,

v.

G. P. REED,

Respondent.

ORDER

UPON consideration of the petition of United Transportation Union, Fred A. Hardin, K. R. Moore and J. L. McKinney, for permission to appeal and the answer to the petition,

IT IS ORDERED that the petition for permission to appeal is granted.

Entered at the direction of Judge Murnaghan, with the concurrences of Judge Russell and Judge Chapman.

For the Court,

JOHN M. GREACEN
CLERK

G. P. REED, Plaintiff-Appellee,

v.

UNITED TRANSPORTATION UNION; FRED A. HARDIN; K. R. MOORE; J. L. MCKINNEY, Defendants-Appellants.

No. 86-2564

United States Court of Appeals, Fourth Circuit.

Argued January 7, 1987.

Decided September 17, 1987.

Clinton Joseph Miller, III, Assistant General Counsel, United Transportation Union, Washington, D.C. (J. David James, Smith, Patterson, Follin, Curtis, James & Harkavy, Greensboro, N.C., on brief), for Appellants.

John West Gresham (Ferguson, Stein, Watt, Wallas & Adkins, P.A., Charlotte, N.C., on brief) for Appellee.

RUSSELL, WIDENER and CHAPMAN Circuit Court Judges:

DONALD RUSSELL, Circuit Judge:

This is an interlocutory appeal brought pursuant to 28 U.S.C. §1292(b). The sole issue before the court is whether the six-month limitations period provided in Section 10(b) of the National Labor Relations Act, 29 U.S.C. §160(b) (1982) ("NLRA") applies to a claim brought under Title I of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §411 (1982) ("LMRDA"), or whether the most analogous state statute of limitations is applicable. The authoritative decision on the point in issue is Del Costello v. Internat'l Brotherhood of Teamsters, 462 U.S. 151 (1983). However, different constructions of that decision have been adopted by the Courts of Appeals. The view on the application of DelCostello have been well stated in two decisions, one by the Third Circuit in Local Union 1397

v. United Steel Workers, 748 F.2d 180 (3d Cir. 1984), the other by the First Circuit in Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986). We find the Third Circuit view more persuasive and follow it in holding that the six-month limitations period of Section 10(b) applies to claims brought under Section 411 of the LMRDA, and reverse the decision of the district court below, which adopted the view of the First Circuit.

The plaintiff, G.P. Reed, is a member of the United Transportation Union ("UTU") and a Secretary-Treasurer of its Local 1715. In August 1982 defendant Fred Hardin, UTU President, had the books and records of Local 1715 audited after concerns arose about the financial stability of the Local. The auditor disallowed reimbursement

checks paid by the Local to Reed in the sum of $1,210.00 because Reed had failed to obtain prior approval for the reimbursements. Reed's counsel wrote to President Hardin on July 1, 1983, seeking repayment of the sum on the ground that different standards were applied to Reed than to other UTU members. He asserted that Local President Warlick ordered the disallowance of the reimbursement checks to harass the plaintiff for not supporting his views, and that if the UTU supported Warlick in those efforts, it would be in violation of Section 411 of the LMRDA. When Hardin responded that he considered the matter closed, Reed's counsel informed Hardin, by letter dated August 2, 1983, that he was advising Reed to commence litigation against the UTU under 29 U.S.C. §411 for violating Reed's equal rights and

privileges as a UTU member. Reed commenced this action in August 1985, two years after his attorney's last letter to defendant Hardin.

In his Complaint, Reed raised claims under the LMRDA as well as pendent state implied contract and quantum merit claims. Specifically, Reed claimed that the defendants had violated his rights to freedom of speech and assembly as a union member as well as his right to be safeguarded from improper disciplinary action. He claimed that the selective application of the "prior approval" policy to disallow his reimbursement claims was meant to punish him for speaking out against Local President Warlick, whose claims for reimbursement were not denied despite his failure to obtain prior approval. He also claimed that the defendants had not properly exercised

their fiduciary duties as officers of the Union pursuant to Title V of the LMRDA, 29 U.S.C. §501.

The defendants moved for summary judgment on the grounds that (a) Reed failed to commence the action within the six-month statute of limitations period provided in Section 10 (b) of the NLRA, (b) Reed failed to exhaust his union remedies, (c) Reed's Section 501 claim failed to state a claim upon which relief could be granted, and (d) Reed's state law claims were barred as preempted by the LMRDA. The district court, by Order dated May 1, 1986, denied the defendants' motion as to all but Reed's Section 501 claim which it dismissed. The court, noting a split in the circuits concerning the statute of limitations applicable to Section 411 claims and that an immediate appeal from the

Order might materially advance the ultimate termination of the litigation, certified an appeal of its Order with respect to the limitations issue pursuant to 28 U.S.C. §1292(b). The defendants appealed on that issue within ten days of the court's Order, and we agreed to hear the interlocutory appeal.

The only question before the court is whether the six-month limitations period provided in Section 10(b) of the NLRA applies to claims brought under Section 411 of the LMRDA. In DelCostello v. Internat'l Brotherhood of Teamsters, 462 U.S. 151 (1983), the Supreme Court determined what statute of limitations applies in an employee's "hybrid" suit against his employer, under Section 301 of the LMRA, and against his union, under the NLRA,

when he alleges the employer's breach of a collective-bargaining agreement and the union's breach of its duty of fair representation by mishandling the ensuing grievance or arbitration proceedings. The Court began with the accepted proposition that because Congress did not specifically provide statute of limitations applicable to all federal labor claims, courts must often "'borrow' the most suitable statute or other rule of timeliness from some other source." Id., at 158. It then reiterated the general rule that courts should apply to such claims the most closely analogous statue of limitations provided under state law. Id. The Court noted, however, that it has not hesitated to use timeliness rules drawn from federal law rather than state law when application of the most analogous state rule might unduly

hinder or frustrate the federal policy behind the substantive federal law. See e.g. Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977) (declining to apply state statutes of limitations to enforcement suits brought by the EEOC under Title VII of the 1964 Civil Rights Act); McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958) (applying federal limitations provision of the Jones Act to a seaworthiness action under general admiralty law); Holmberg v. Armbrecht, 327 U.S. 392 (1946) (refusing to apply a state statute of limitations to a federal action lying only in equity).

The Court analyzed the "hybrid §301/fair representation" claims brought by the plaintiffs and found that Section 10(b) of the NLRA, which establishes a six-month period for making charges of unfair labor

practices to the NLRB, should be applied to the hybrid claim because it was more analogous to the claim than were the suggested state-law parallels. In a careful analysis, the Court explained that the suggested state parallels, i.e., breach of contract suits, suits for vacation of arbitration awards and malpractice suits, failed to adequately balance the opposing interests of the employee in vindicating his rights and the federal interest in the rapid settlement of labor disputes. Id. at 164-69. The Court recognized a "family resemblance" between fair representation claims and unfair labor practice claims against unions:

> Many fair representation claims. . . include allegations of discrimination based on membership status or dissident views, which would be unfair labor practices under §8(b)(1) or (2). Aside from these clear cases, duty of fair representation claims are allegations of unfair, arbitrary, or discriminatory treatment of workers by unions--as are virtually all unfair labor practice charges made by workers against unions.

Id. at 170 (emphasis added).

More important, the Court stressed the "close similarity" in policy considerations relevant to the choice of a limitations period for both the hybrid action and unfair labor practice action. Id., at 171. It found that "'the national interests in stable bargaining relationships and finality of private settlements,'" which necessitate a prompt resolution of labor related disputes, and "'an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system,'"

are considerations in both actions. Id., at 171 quoting United Parcel Service, Inc. v. Mitchell, 451 U.S. 56, 70 (1981). Finding that the application of the proposed state limitations period would frustrate federal interests, and that Congress adopted Section 10(b) with the competing interests of the government and employee in mind, the Court adopted the Section 10(b) limitations period for "hybrid 301/fair representation" actions. The Court emphasized, however, that its decision should not be taken as a departure from the general rule favoring the adoption of analogous state limitations periods.

Although DelCostello did not address the issue before this court, several circuits have applied the analysis of DelCostello to a LMRDA Section 411 claim, but with

conflicting results. The majority of circuits considering the question have found Section 10(b) to be the most appropriate statute of limitations for Section 411 claims. See Davis v. United Auto Workers, 765 F.2d 1510 (11th Cir. 1985), cert. denied, ____ U.S. ____ (1986) (following Steelworkers' Local 1397 v. USWA, 748 F.2d 180 (3d Cir. 1984)); Adkins v. IBEW, 769 F.2d 330, 335 (6th Cir. 1985) (following Local 1397); Vallone v. Local Union No. 705, Internat'l Brotherhood of Teamsters, 755 F.2d 520 (7th Cir. 1984); Steelworkers' Local 1397 v. USWA, 748 F.2d 180 (3d Cir. 1984); Linder v. Berge, 739 F.2d 686 (1st Cir. 1984) (concerning a Section 414 claim). The most thorough analysis in support of this view was given by the Third Circuit in Local 1397. In that case, the court found that

Section 411 actions, like the fair representation action considered in DelCostello, bear a "family resemblance" to unfair labor practice charges. The court stated:

> As in DelCostello, an analogy between unfair labor practice charges and section [411] suits exists not only in practice, but more importantly in the considerations that underlie the choice of a limitations period in the federal labor law field. Further, we believe that a six-month, rather than a longer limitations period, is fair to all parties given the practicalities of most litigation under the LMRDA.

Despite appellants' protestations to the contrary, suits brought under section [411] do bear a "family resemblance" to unfair labor practice charges. Cf. DelCostello, 103 S.Ct. at 2293 (finding a "family resemblance" between unfair labor practice charges and breach of the duty of fair representation claims). Both section 8(b)(1) of the NLRA and section [411] are addressed to the same basic concern: the protection of

individual workers from arbitrary action by unions, which have been appointed the exclusive representatives of such individuals in the workplace. Appellants' attempted distinction between the "internal" concerns of the LMRDA and the "external" concerns of section 8(b) of the NLRA is thus flawed. In our scheme of labor relations, a union has but one function: the representation of individual workers in collective bargaining with their employer. Whether an individual's dispute with his union concerns an "internal" matter, such as freedom to speak against union leadership, or an "external" matter, such as the processing of grievances, every dispute implicates the responsibility that a union has for the economic welfare of its members.

Id., at 183 (footnotes omitted).

Noting an argument similar to the one advanced by the plaintiffs and the district court below that Section 411 claims are analogous to civil rights claims, the court stated

that "the purpose and operation of such rights cannot be divorced from general principles governing our federal labor policy" and that "rapid resolution of internal union disputes is necessary to maintain the federal goal of stable bargaining relationships, for dissension within a union materially affects the union's activities and effectiveness in the collective bargaining arena." Id., at 183-84. It, therefore, applied the Section 10(b) limitations period to the Section 411 claim.

The First Circuit, in Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986), declined to apply Section 10(b) to a Section 411 action, applying instead what it believed to be a more analogous state civil rights statute of limitations. In that case the plaintiff alleged that two local unions denied him full and

equal rights of membership. The court found that the plaintiff's claim was essentially an assertion of his "civil rights" and that under the reasoning in DelCostello, the court should apply the state limitations provision applicable to civil rights claim which it believed to be more analogous than Section 10(b). The court also found that because the plaintiff's claim involved only an internal dispute, it in no way challenged the stability of the relationship between the union and employer, and hence did not affect federal labor policy. Significantly, the court emphasized that in neither Local 1397 nor in Davis was there "an analogous state statute with anywhere near the aptness and closeness of fit of the Massachusetts civil rights statute in this case." Doty, 784 F.2d at 9. The court thus

differentiated the case before it from Local 1397 and Davis, stating that it was not in direct conflict with those decisions. It distinguished Vallone, Adkins and its own previous decision in Linder as having involved hybrid claims.

A few district courts have applied reasoning similar to the analysis in Doty and have declined to apply Section 10(b) to Section 411 actions when a more analogous state statute was available. Within our own circuit Rector v. Elevator Constructors, 625 F. Supp. 174 (D. Md. 1985), was such a case. In the case sub judice, the district court, on the urging of the plaintiff, declined to adopt the reasoning of the Third Circuit in Local 1397, but instead, it followed the reasoning of the First Circuit. The court found that Reed's interest in "union

democracy" outweighed any federal interest in the rapid resolution of internal union disputes because such disputes do not affect labor-management relations. The court also noted that in our pre-DelCostello decision in Howard v. Aluminum Workers Internat'l Union and Local, 589 F.2d 771 (4th Cir. 1978), we applied a state tort limitations statute to a union member's Section 411 claim against a union for allegedly violating his right of free speech. The district court, therefore, opted to apply North Carolina's three-year limitations period for personal injury actions to Reed's Section 411 claim against the defendants.

We believe that the district court erred in applying the state limitations period rather than the six-month limitations period of

Section 10(b). We find that the Third Circuit's analysis in Local 1397 is the correct one and we adopt that analysis for claims brought under Section 411. As explained by the Third Circuit, the plaintiff's claims, though they be akin to civil rights claims, cannot be divorced from the federal labor policy favoring stable labor-management relations. Indeed, Congress enacted the LMRDA "to eliminate or prevent improper practices on the part of labor organizations, employers, labor consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act," a fundamental tool of federal labor policy. 29 U.S.C. §402(c). Internal union disputes, if allowed to fester, may erode the confidence of union members in their leaders and possibly

cause a disaffection with the union, thus weakening the union and its ability to bargain for its members. Such prolonged disputes may also distract union officials from their sole purpose--representation of union members in their relations with their employer. These probable effects of protracted disputes may be destablizing to labor-management relations. Extended limitations periods for bringing Section 411 claims, therefore, may frustrate federal labor policy.

Although well aware of the Supreme Court's caution in DelCostello against an unjustified departure from the general rule favoring the application of analogous state limitations periods, we believe that since Section 411 claims bear a "family resemblance" to unfair labor practice charges and a lengthy

limitations period would frustrate the federal policy favoring rapid resolution of labor-related disputes, the rationale of DelCostello constrains us to apply the Section 10(b) limitations period which balances the interests of the government and employer, to Section 411 claims.

Reed has asked that we not apply our holding retroactively to his case because our decision constitutes a departure from our prior decision in Howard where we stated that "federal courts considering suits brought under the [LMRDA] must apply the most analogous state limitations period. Id., 589 F.2d at 774.

In an en banc decision in Zemonick v. Consolidation Coal Co., 796 F.2d 1546, 1547 (4th Cir. 1986), cert. denied, 107 S.Ct. 671 (1986),

we held that DelCostello was to be applied retroactively. We reaffirmed this holding in Triplett v. Brotherhood of Ry. Airline and S.S. Clerks, 801 F.2d 700, 702-03 (4th Cir. 1986), and the district courts of this Circuit have recognized the retroactivity of DelCostello as decided in Zemonick and dismissed actions for failure to meet the deadline established in that decision. Meadows v. Eaton Corp., 642 F.Supp. 284, 287 (W.D.Va. 1986). Any claim that Del Costello is not retroactive in this Circuit is foreclosed by our decision in Zemonick.

The decision of the district court is accordingly reversed and the cause is remanded to the district court for the entry of an order in conformity with this opinion. REVERSED and REMANDED WITH INSTRUCTIONS.